

CITY OF VENTURA
CITY COUNCIL AGENDA

Supplemental Information Packet

**Public Communications Received by 11:00 a.m.,
January 21, 2021**

Meeting of January 23, 2021

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available in the City Clerk's Office, 501 Poli Street, Room 204, Ventura, during normal business hours as well as on the City's Website – www.cityofventura.ca.gov
<https://www.cityofventura.ca.gov/1236/City-Council-Public-Hearing-NoticesSuppl>

CITY OF VENTURA

CITY ATTORNEY LEGAL REPORT

Agenda Item No.: Closed Session

City Council Action Date: 1/23/2021

January 20, 2021

Honorable Mayor and Members of the City Council
City of San Buenaventura, California

Re: Closed Session Item – Significant Exposure to Litigation

Dear Mayor and Members of the City Council:

RECOMMENDATION

In light of the threat of litigation set forth in the attached letter, that the City Council meet in Closed Session to receive a legal analysis of this exposure and to receive direction on how, if at all, to respond.

DISCUSSION

A recent Court of Appeal's case¹ indicates that when a City Council is going into Closed Session under the Brown Act based on a threat of litigation that additional information beyond the "safe harbor" agenda listing provided in the Brown Act is required to be provided. As such, this memorandum is made a part of the Agenda and contains the information required by this Court of Appeal decision. This is the first Closed Session

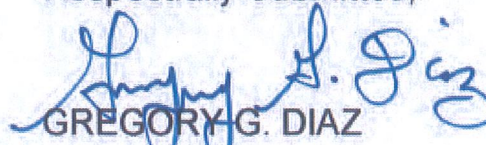
¹ *Fowler v. City of Lafayette*, (2000) 46 Cal.App.5th 360.

Re: Closed Session Item – Significant Exposure to Litigation

held by the City Council under this provision of the Brown Act since this decision became well known.

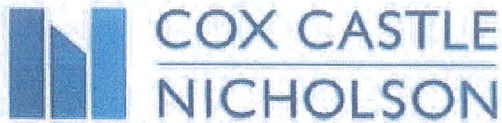
The City received the attached letter from an attorney representing the holder of the Parklands development agreement indicating their position that they are entitled to continue to freeze City fees based on the force majeure clause in the development agreement. For a variety of legal and factual reasons, the City disagrees with this position. A legal briefing will be provided to the City Council and an opportunity for discussion and direction will be provided to the City Council in Closed Session.

Respectfully Submitted,



GREGORY G. DIAZ
City Attorney

cc: Alex D. McIntyre, City Manager



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File No. 087181

December 30, 2020

VIA EMAIL

Alex D. McIntyre
City Manager
City of Ventura
501 Poli Street
Ventura, CA 93001

Re: Parklands Development Agreement (DA-38): City Breach

Dear Mr. McIntyre:

This office represents Westwood Communities Corp., the developer ("Developer") of the property subject to the above-referenced development agreement (the "Parklands DA"), which details various rights and obligations of the Developer and the City of Ventura ("City") with respect to Developer's residential development (the "Project").

In an August 6, 2020 letter (the "August Letter") the City determined that the Covid-19 worldwide pandemic, coupled with the Governor of California's Proclamation of a State of Emergency, collectively constituted a force majeure event as defined by Parklands DA section 15.3. Pursuant to this determination, the August Letter extended the time in which numerous Project development fees would be subject to the fee rates in effect at the time of the 2009 adoption of Specific Plan No. 6, as outlined in Parklands DA section 4.1.1, to December 31, 2020 (the "Fee Cap").

In a recent letter to you, the Developer asserted that the unfortunate rising rates of Covid-19 in California in general and in Ventura County, the implementation of a Regional Stay Home Order that among other things restricts non-essential travel and significantly curtails or closes most business operations, continual job losses, and residential market and financing uncertainty constituted a continuation of the force majeure event acknowledged in the August Letter. The Developer requested that the City acknowledge the continuation of the direct impacts on Project development and, in line with the parties' previous interpretation of relevant Parklands DA provisions, agree to a further extension of the Fee Cap until June 30, 2021.

To date, the City has not agreed to a further Fee Cap extension and has instead attempted to improperly impose current fees on the Project, thereby jeopardizing Project viability in the face of significant development challenges outside of the Developer's control. While residential construction may technically continue under various applicable orders, the Covid-19 pandemic

has impacted residential development in numerous ways. First, a dramatic and enduring increase in unemployment threatens the ability of potential homebuyers to qualify for loans or close on properties, or to even have enough funds to pay mortgages. This is especially true for the Project, which is not a luxury development and instead targets dual-income, middle-class wage earners who have been decimated by the pandemic. Second, market and lending/financing uncertainty inhibits the development of a large, multi-phase project, as well as the sale to homebuilder buyers, who have made it clear they are impacted in their ability to move forward in the face of such instability and additional uncertainty regarding City fees. Third, the pandemic has significantly impacted construction material supply chains and costs, rendering construction difficult to infeasible in many instances. Fourth, the current stay at home order inhibits the Developer's ability (or the ability of a homebuilding buyer) to fund the Project, put together the requisite labor force, and start construction.

The City's refusal to agree to the Developer's reasonable Fee Cap extension request, pursuant to the force majeure provision of the Parklands DA, constitutes a breach of the Parklands DA and is in direct contravention of the City's determination in the August Letter.¹ The City's position is particularly troubling in light of the state housing crisis and requirements that the City not take actions to impede housing development.

The City's breach is currently inhibiting the sale of the Project. The Developer hereby requests that the City remedy this breach by immediately agreeing to the Fee Cap extension request in its entirety.

The Developer reserves all rights and waives none provided by the Parklands DA or otherwise, including the right to institute legal action to remedy the City's breach of the Parklands DA.

Sincerely,



Alexander M. DeGood

AMD:AMD

cc: Gregory G. Diaz, City Attorney
Akbar Alikhan, Assistant City Manager
Charles W. Cohen, Esq.

¹ The Developer also notes that City also has not undertaken expedited processing of necessary applications pursuant to Parklands DA sec. 3.2.3.